

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Stuart Mark Kanzler,
doing business as TOL Enterprises, Inc.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter was scheduled for hearing before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on June 24, 2004.

Michael J. Tostengard, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared on behalf of the Department of Commerce ("Department"). The Respondent, Stuart Mark Kanzler, doing business as TOL Enterprises, Inc., did not appear in person or by counsel. The record closed upon the Respondent's default on June 24, 2004.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

1. Did Respondent engage in unlicensed residential building contractor or remodeler activities, in violation of Minn. Stat. §326.84, subds. 1 and 1b?

2. Did the Respondent perform in breach of contract, in violation of Minn. Stat. §326.91, subd. 1(4)?

3. Did the Respondent demonstrate incompetence, untrustworthiness, and financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1 (6)?

4. Did the Respondent use the license of another to fraudulently obtain a building permit, in violation of Minn. Stat. § 326.91, subd. 1(13)?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 24, 2004, the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges was sent via first class and certified mail to the Respondent. The prehearing conference was initially scheduled for April 15, 2004. At the request of the Respondent, the prehearing was continued to April 29, 2004. The Respondent appeared at the prehearing conference on April 29, 2004.

2. At the prehearing conference, the Respondent expressed an interest in resolving the matter without litigation. At the same time, the hearing was scheduled for June 24, 2004.

3. A Prehearing Order was issued on April 30, 2004, and was served on the parties. It scheduled the matter for hearing on June 24, 2004, and set a deadline of June 17, 2004 to file exhibit and witness lists with the administrative law judge.

4. The Respondent failed to have any contact with the Department or the Administrative Law Judge, failed to file exhibit or witness lists and failed to appear at the hearing.^[1]

5. Because Respondent failed to appear, he is in default.

6. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50.

2. Respondent received due, proper and timely notice of the charges, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the Administrative Law Judge's prior consent, to appear at the hearing.

6. Respondent has engaged in unlicensed residential building contractor or remodeler activities in violation of Minn. Stat. § 326.84, subds. 1 and 1b.

7. Respondent has performed in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4).

8. Respondent has demonstrated incompetence, untrustworthiness, and financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6).

9. Respondent used the license of another to fraudulently obtain a building permit in violation of Minn. Stat. § 326.91, subd. 1(13).

10. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce take adverse action against Respondent, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 25th day of June, 2004.

S/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default (no tapes)

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

^[1] A letter reminding the Respondent of the dates was sent on June 8, 2004. Although an error concerning the hearing date appears in the letter, the error is obvious on its face, and the deadline for filing the exhibits and witness lists was stated correctly. The Respondent did not reply to the letter.